Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Applications of Ameritech Corp., Transferor, and SBC Communications, Transferee, For Consent To Transfer Control Of Corporations Holding Commission Licenses And Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules	)	CC Docket No. 98-141

WORLDCOM COMMENTS IN SUPPORT OF THE PETITION FILED BY Z-TEL COMMUNICATIONS, INC. REQUESTING THAT THE FCC INVESTIGATE THE PUBLIC INTEREST BENEFITS OF THE TRANSFER AND TOLL THE EXPIRATION OF CERTAIN SBC/AMERITECH MERGER CONDITIONS PENDING INVESTIGATION

WorldCom, Inc. ("WorldCom") hereby submits these comments in support of the petition filed by Z-Tel Communications, Inc. ("Z-Tel") on September 3, 2002.[1] In its petition, Z-Tel requests that the Federal Communications Commission ("FCC" or "Commission") undertake an investigation into whether SBC Communications, Inc.'s ("SBC") merger with Ameritech has satisfied the public interest balancing test employed by the Commission in the SBC/Ameritech

Merger Order.[2] As proposed by Z-Tel, this investigation would toll the expiration of SBC's Merger Conditions,[3] which are currently set to expire on October 8, 2002.

WorldCom agrees that the Commission should not let the Merger Conditions expire without re-visiting the public interest analysis of the Merger Order. Given SBC's numerous and well-documented violations of the Conditions, the Commission should follow-through with its commitment to "ensure that the merger remains beneficial to the public"[4] and commence an investigation of the public interest benefits of the merger. An investigation will likely reveal that the public interest balance has been dramatically skewed in the wrong direction. In any event, at a minimum, the Commission should extend the application of the Merger Conditions until this matter has been fully explored.

In 1999, when looking at how the public interest would be impacted by the proposed merger of SBC and Ameritech, the Commission found that public interest harms were "not mitigated by the proposed transaction's potential public interest benefits. Thus, if our analysis ended at this point, we would have to conclude that the Applicants have not demonstrated that the proposed transaction, on balance, will serve the public interest, convenience and necessity."[5]

In particular, the Commission found that the merger by itself would harm telecommunications consumers by removing a significant potential participant in local mass markets, increasing the duration of the companies' market power and raising the cost of

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[1] *Z-Tel Communications, Inc. Petition to Investigate the Public Interest Benefits of the Transfer and to Toll the Expiration of Certain SBC/Ameritech Merger Conditions Pending Investigation*, CC Docket No. 98-141 (filed Sept. 3, 2002) ("*Z-Tel Petition*").

[2] *Applications of Ameritech Corp., Transferor and SBC Communications, Inc., Transferee for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, *Memorandum Opinion and Order*, 14 FCC Rcd 14712 (rel. Oct. 8, 1999) ("*Merger Order*").

[3] *Id*., Appendix C ("*Merger Conditions*").

[4] *See Merger Order*, para. 360.

[5] *Id.,* para. 348.

regulating them, and increasing the incentive and ability for the newly merged firm to discriminate against rivals, especially in the provision of advanced services.[6]

Nevertheless, in approving the merger, the Commission concluded that the public interest harms could be overcome with a set of conditions: "Applicants package of conditions, with modifications by this Commission, alters the public interest balance of the proposed merger by mitigating substantially the potential public interest harms while providing additional public interest benefit."[7]

Of course, implicit in the Commission's analysis was that this balance could be achieved only if *SBC followed-through and complied fully with the Conditions*. Unfortunately, this eventuality has not occurred. As Z-Tel highlights in its petition, the record is replete with instances of non-compliance, thus leaving the issue of whether the public interest has been served questionable at best.

For example, as Z-Tel explains, SBC has repeatedly refused to implement the shared transport condition in paragraph 56 of the Merger Conditions[8] in the Ameritech states, resulting in harm to competitors and consumers and ultimately giving rise to a proposed a $6 million forfeiture.[9] Additionally, SBC has been fined millions of dollars for inadequate wholesale provisioning and inadequate OSS.[10] Moreover, audit reports filed with the Commission have shown numerous Merger Condition violations.[11] Z-Tel's petition further highlights how SBC/Ameritech's out-of-region entry strategy, as envisioned by the Merger Order, is virtually

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[6] *Id*., para. 5.

[7] *Id*. para. 349.

[8] *Merger Conditions*, para. 56.

[9] *Z-Tel Petition* at 12-17.

[10] *Id*. at 17-20.

[11] *Id*. at 20-22.

non-existent.[12] All of these actions have harmed telecommunications competitors and consumers across the country and underscore the need for an investigation of SBC's compliance with the Merger Conditions.

To be sure, WorldCom has, on numerous occasions, brought SBC's non-compliance to the Commission's attention since the Merger Order was released. For example, in several letters submitted in 2000, we highlighted how merger-related audits revealed that SBC was failing to comply with the Merger Conditions.[13] WorldCom has also advised the Commission as to SBC's non-compliance relating to the Uniform and Enhanced OSS Interface ("U&E Interface") mandated by the Merger Conditions. In particular, we have pointed out that SBC's documentation provided pursuant to the Conditions, was hopelessly flawed[14] and we warned that SBC would inevitably seek an extension of the interface deadlines imposed by the Merger Conditions. When SBC sought just such an extension, we urged the Commission to direct SBC to make payments to the U.S. Treasury, pursuant to paragraph 382 of the Merger Order.[15] And, even after the delay, when the interface was finally implemented, myriad problems surfaced, including stability issues relating to legacy systems.

Specifically, for months after April 10, 2002, when the U&E Interface was implemented, WorldCom experienced endless error messages, time-outs, slow responses, no-responses and system lock-ups with SBC's pre-order interfaces. While some of these problems have since been

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[12] *Id*. at 23-26.

[13] Letter from Lisa B. Smith, Director/Senior Policy Counsel, WorldCom, to Dorothy Attwood, Chief Common Carrier Bureau, FCC, and David Solomon, Chief Enforcement Bureau, FCC (Sept. 12, 2000); Letter from Lisa B. Smith, Director/Senior Policy Counsel, WorldCom, to Dorothy Attwood, Chief Common Carrier Bureau, FCC, and David Solomon, Chief Enforcement Bureau, FCC (Nov. 3, 2000).

[14] *See, e.g.*, Letter from Lisa R. Youngers, Associate Counsel, WorldCom, Inc., to Dorothy Attwood, Chief, Common Carrier Bureau, Federal Communications Commission (Aug. 8, 2000) at 2; *See also*, e-mail from Dennis Guard, Associate Counsel, WorldCom, Inc., to Anthony Dale, Senior Attorney, Accounting Safeguards Division, Common Carrier Bureau, Federal Communications Commission, (March 2, 2001).

resolved, a number of problems still exist. For example, twice in August 2002, in the Ameritech region, SBC effectively disconnected its electronic OSS link with WorldCom by unilaterally changing IP addresses. This essentially put WorldCom out of business for about 10 hours during normal business hours each time, thus inhibiting WorldCom's ability to sign up new customers and to provide service to its existing base of customers. Further, when WorldCom called the Ameritech Help Desk to report the problem, Ameritech denied that there was any problem and stated that it must be a WorldCom issue only. Subsequently, Ameritech acknowledged that it caused both outages. But the misdirection provided by Ameritech's Help Desk created a further waste of resources as it forced WorldCom to unnecessarily review many non-applicable possible causes of the disconnection of the electronic link between the companies.

The Commission should act swiftly on Z-Tel's petition. In the Merger Order, the Commission committed, pursuant to its public interest mandate, to utilizing "every available enforcement mechanism, including, if necessary, revocation of the merger firm's section 214 authority, to ensure compliance with these conditions."[16] We respectfully request that the Commission now make certain that this directive is carried out by granting Z-Tel's petition. The Commission should quickly initiate a proceeding to examine whether the SBC/Ameritech merger remains in the public interest, while ensuring the Merger Conditions do not sunset before they have truly served their purpose.

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[15] Letter from Lisa B. Smith, Director/Senior Policy Counsel, WorldCom, to Dorothy Attwood, Chief Common Carrier Bureau, FCC, and David Solomon, Chief Enforcement Bureau, FCC (March 14, 2002).

[16] *Merger Order*, para. 360.

CONCLUSION

For the reasons described herein, WorldCom respectfully requests that the Commission grant Z-Tel's petition and toll the expiration of all SBC/Ameritech Merger Conditions pending Commission review of whether and to what extent: (1) public interest benefits have resulted from the merger of SBC and Ameritech and (2) the merger remains consistent with the public interest given SBC's well documented failure to comply with the letter and spirit of the Merger Conditions.

Respectfully submitted,

WorldCom, Inc.

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